

STATE OF MICHIGAN
IN THE SUPREME COURT

FRED PAQUIN,

Plaintiff/Appellant,

-vs-

CITY OF ST. IGNACE,

Defendant/Appellee.

Supreme Court
File No. 156823

Court of Appeals
File No. 334350

Lower Court
File No. 15-7789-CZ

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**DEFENDANT/APPELLEE CITY OF ST. IGNACE'S ANSWER TO
APPLICATION FOR LEAVE TO APPEAL**

ORAL ARGUMENT REQUESTED¹

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¹ Defendant/Appellee City of St. Ignace does not believe that oral argument will assist the court; however, if oral argument is granted, the city reserves its right to participate.

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STATEMENT OF ORDER APPEALED FROM AND RELIEF SOUGHT

Defendant/Appellee City of St. Ignace acknowledges that Plaintiff/Appellant seeks review of a per curium opinion of the Michigan Court of Appeals dated October 19th, 2017, for publication, a copy of which is attached to the Plaintiff/Appellant's Application as Exhibit 1, and the Mackinac County Circuit Court's Order dated July 29th, 2016, a copy of which is attached hereto, as Exhibit A. The City of St. Ignace respectfully requests that this Honorable Court deny Plaintiff/Appellant's Application for Leave to Appeal.

STATEMENT OF QUESTIONS PRESENTED

The city of St. Ignace accepts the Statement of Question presented by Plaintiff/Appellant.

STATEMENT OF FACTS

The City of St. Ignace accepts the Plaintiff/Appellant's Statement of Facts and Material proceedings as presented.

LEGAL ARGUMENT

This case involves construction of constitutional language, specifically, Article 11 §8 of the Michigan Constitution, which provides, in its entirety:

"A person is ineligible for election or appointment to any state or local elective office of this state and ineligible to hold a position in public employment in this state that is policy-making or that has discretionary authority over public assets if, within the immediately preceding 20 years, the person was convicted of a felony involving dishonest, deceit, fraud, or a breach of the public trust and the conviction was related to the person's official capacity while the person was holding any elective office or position of employment in local, state, or federal government. This requirement is in addition to any other qualification required under this constitution or by law."

This dispute is whether the reference to "local government" includes the Sault Tribe of Chippewa Indians, a federally recognized Indian tribe.

"The object of construction, as applied to a written constitution, *is to give effect to the intent of the people in adopting it*. In the case of all written laws, it is the intent of the lawgiver that is to be enforced. But this intent is to be found in the instrument itself... "Where a law is plain and unambiguous, whether it be expressed in general or limited terms, the [lawgiver] should be intended to mean what they have plainly expressed, and consequently no room is left for construction". [Cooley, *Constitutional Limitations* (1st ed), p 55 (emphasis in the original), quoted in *American Axle*, 461 Mich at 362.]"

National Pride at Work, Inc. v Governor, 481 Mich 56, 81; 748 NW 2d 524 (2008).

The Court of Appeals' opinion, that is the subject of this appeal, included a plain meaning analysis finding the following:

"We agree with the Attorney General and the trial court that the Tribe qualifies as a "local government" under the plain meaning of the text of Const 1963, art 11, § 8. Because the constitutional provision does not define the term "local government," it is appropriate to consult a dictionary definition to determine the plain meaning of the phrase at the time of ratification. See *Nat'l Pride at Work, Inc*, 481 Mich at 69, 75-77. *Merriam-Webster's Collegiate Dictionary* (2007), p 730, defines "local government" as: "1. The government of a specific local area constituting a major political unit (as a nation or a state); *also*: the body of persons constituting such a government. The word "local" means, in relevant part, "of, relating to, or characteristic of a particular place: not general or widespread." *Id.* The relevant definition of "government" is "the body of persons that constitutes the governing authority of a political unit or organization[.]" *Id.* At 541."

"It is beyond dispute that the Sault Tribe of Chippewa Indians is a sovereign political community, or unit."

"Indian tribes are distinct, independent political communities, retaining their original natural rights *in matters of local self-government*. Although no longer possessed of the full attributes of sovereignty, they remain a separate people, with the power of regulating their internal and social relations. They have power to make their own substantive law in internal matters and to enforce that law in their own forums. [*Santa Clara Pueblo v Martinez*, 436 US 49, 55-56; 98 S Ct 1670; 56 L Ed 2d 106 (1978) (emphasis added; quotation marks and citations omitted).]"

"Although "Congress has plenary authority to limit, modify, or eliminate the powers of local self-government which the tribes otherwise possess[.]" *Id.* At 56, "unless and until Congress acts, the tribes retain their historic sovereign authority." *Michigan v Bay Mills Indian Community*, ___ US ___, ___; 134 S Ct 2024, 2030; 188

L Ed 2d 1071 (2014) (quotation marks and citations omitted). The fact that the Tribe is subject to plenary control by Congress does not preclude the determination that the Tribe is a "domestic dependent nation" exercising "inherent sovereign authority." *Id.*'

"Further, authority from a variety of contexts supports the proposition that Michigan clearly views Indian tribes as units of local government with authority to execute local governmental functions. See, for example, *McDonald v Means*, 309 F3d 530, 539 (CA 9, 2002) (noting that a federal regulation made clear that the administration and maintenance of Indian reservation roads and bridges are essentially functions of the local government, which was an Indian tribe with respect to the road at issue in *McDonald*); OAG, 2003-2004, No. 7134, p. 46 (May 21, 2003) (quoting the above analysis in *McDonald* and stating that *McDonald* equated local government with tribal government); MCL 333.13704(l) (defining a "[m]unicipality" to include Indian tribes for the purpose of an environmental law); Executive Order No. 2002-5 (defining "[l]ocal units of government" to include federally recognized Indian tribes in an executive order reorganizing the executive branch of Michigan); Mich Admin Code, R 29.2163(h) (defining "[l]ocal government" to include Indian tribes with respect to the regulation of underground storage tanks).'

"In addition, it is also undisputed in the present case that the Board of Directors is the governing body of the Sault Tribe of Chippewa Indians, and that plaintiff served as an elected member of that board. Thus, to the extent that the Tribe is an "independent political communit[y], retaining [its] original natural rights in matters of local self-government," *Santa Clara Pueblo*, 436 US at 55, and plaintiff was an elected member of the Tribe's governing body, plaintiff served as an elected official in a local government. Const 1963, art 11, § 8 has no language stating that the local governmental entity must be a political subdivision of the state of Michigan. Moreover, as chief of police in the Tribe's Law Enforcement Division, plaintiff also held a position of employment in local government. *Tomkiewicz v Detroit News, Inc.*, 246 Mich App 662, 671; 635 NW2d 36 (2001) ("It is indisputable that law enforcement is a primary function of local government. . ."), quoting *Coursey v Greater Niles Twp Publishing Corp*, 40 Ill 2d 257, 265; 239 NE2d 837 (1968); see also *Royal v Police & Fire Comm of Ecorse*, 345 Mich 214, 219; 75 NW2d 841 (1956) (noting that the control of a police department was a function of a local governmental entity).'

"In light of the foregoing, we hold that the Tribe constitutes a local government and that plaintiff's employment with the Tribe constituted employment in "local, state, or federal government" for purposes of Const 1963, art XI, § 8."

While the Court of Appeals did not find it necessary to discuss the purpose of Article 11 § 8, construction of constitutional language, and its common understanding, can involve consideration of the purpose sought to be accomplished.

"The technical rules of statutory construction do not apply when construing a constitution. *Traverse City School Dist v Attorney General*, 384 Mich 390, 405; 185 NW2d 9 (1971). Instead, our task is to divine the "common understanding" of the provision, that meaning "which reasonably minds, the great mass of the people themselves, would give it". Cooley, *Const Limitations* (6th ed), p 81. Words are to be given their ordinary meaning. Regard must also be given to the circumstances leading to the adoption of the provision and the purpose sought to be accomplished. *Kearney v Board of State Auditors*, 189 Mich 666, 673; 155 NW 510 (1915). The constitutional convention debates and the address to the people, though not controlling, are relevant. *Beech Grove Investment Co v Civil Rights Comm*, 380 Mich 405; 157 NW2d 213 (1968)." *People v Nash*, 418 Mich 196, 209; 241 NW2d 439 (1983)

In the Attorney General opinion addressing this very matter, Opinion No. 7273 dated August 15th, 2013, it was noted on page 5 that the purposes of Article 11, § 8, were to garner trust and credibility with the electorate, maintain public trust, and insure that only trustworthy persons will hold public office.

With such purposes in mind, there is no logic in exempting the felonious action of a local tribal governmental official, while applying the prohibition in Article 11 § 8 to a state governmental official who did the same thing. Plaintiff/Appellant makes no suggestion that Plaintiff/Appellant's actions have any less effect on maintaining the public's trust just because the felonious act occurred in the service of a local tribal government, as opposed to a local state government. The action that erodes public trust is the same.

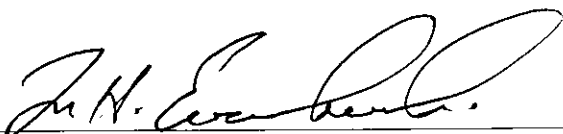
Instead, Plaintiff/Appellant argues that the Court of Appeals decision somehow impacts the Sault Tribe sovereignty. The Sault Tribe, by its silence, apparently does not feel its sovereignty is threatened. Article 11 § 8 simply has no impact on who is eligible to serve in tribal government. Plaintiff/Appellant has offered no explanation as to how Article 11 § 8 actually affects the Sault Tribe's sovereignty.

Plaintiff/Appellant also fails to make any sense with his hypothetical argument that Otto Warmbier, or other American citizens, who may be wrongfully convicted of felonies in a foreign country, would be disqualified from running for public office in Michigan. Plaintiff/Appellant ignores the fact that Article 11 § 8 requires that the convicted felon had to be acting in an official capacity for some foreign federal government, in this case North Korea.

RELIEF REQUESTED

The City of St. Ignace respectfully requests that Plaintiff/Appellant's application for appeal be denied for the reason that the Court of Appeals' opinion is correct and not erroneous.

Dated: December 21, 2017



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